

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.2 of 1997

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Kamla Devi, Wife of Bharat Prasad, resident of Mohalla – Dariyapur
Gopal, P.S. – Pirbahore, Patna.

.... Appellant/s

Versus

1. The Union of India, Ministry of Finance (Department of Revenue of Banking), New Delhi.
2. Competent Authority under section 3(6) of the Central Act 13 of 1976 having its office at Ahayar Bhawan, P/7 Chowringhee Square, Calcutta -1.
3. Officer on Special Duty, Competent Authority, 20 British India Street, Calcutta – 29.
4. Appellate Authority under Section 3(a) of Act 13 of 1976 Ministry of Finance (Department of Revenue and Banking), New Delhi.
5. Tax Recovery Officer, Income Tax Department, Patna.
6. State of Bihar, Home Department (Special Section) Bihar Secretariat, Patna.

.... Respondents

With

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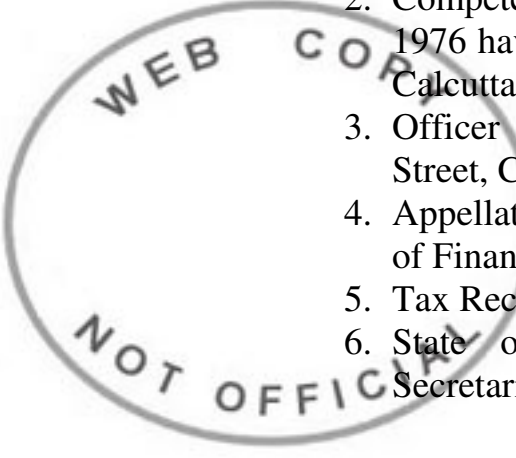
Letters Patent Appeal No. 25 of 1997
IN
Civil Writ Jurisdiction Case No. 2059 of 78

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1. Vishnu Prasad
2. Krishna Prasad
3. Pankaj Kumar
All sons of late Bharat Prasad
4. Kamla Devi, wife of Late Bharat Prasad. All resident of Mohalla – Dariyapur Gola, P.S. – Pirbahore, District – Patna.
5. Kumkum Gupta, daughter of Late Bharat Prasad, wife of Dr. V.B. Gupta, resident of 3 Park Road, P. Burnpur, District – Bardhawan, West Bengal.
6. Madhu Dayal, daughter of Late Bharat Prasad, wife of Bishambhar Dayal Sharaf, resident of Barhaj Bazar, District – Deoria, Uttar Pradesh.
7. Poonam, daughter of late Bharat Prasad, wife of Late Col.C.Nath, Area Formation Signals HQ. 35W.AC(IAF) Sector – IX Gandhi Nagar – 381009, Gujarat.
8. Nutan, daughter of Late Bharat Prasad, wife of Ashok Kumar Soni, resident of Kendua Bazar, Kulti, Hanuman Mandir, District – Barwhawan, West Bengal.

.... Appellants

Versus

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1. The Union of India, Ministry of Finance (Department of Revenue of Banking), New Delhi.
 2. Competent Authority under section 3(6) of the Central Act 13 of 1976 having its office at Ahayar Bhawan, P/7 Chowringhee Square, Calcutta -1.
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 5. Tax Recovery Officer, Income Tax Department, Patna.
 6. State of Bihar, Home Department (Special Section) Bihar Secretariat, Patna.

.... Respondents

With

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Letters Patent Appeal No. 27 of 1997

IN

Civil Writ Jurisdiction Case No. 2191 of 78

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Smt. Lilawati Devi, wife of Sri Shyambabu, resident of Mohalla Dariyapur Gola, P.S. – Pirbahore, Patna.

.... Appellant

Versus

1. The Union of India, Ministry of Finance (Department of Revenue of Banking), New Delhi.
2. Competent Authority under section 3(6) of the Central Act 13 of 1976 having its office at Ahayar Bhawan, P/7 Chowringhee Square, Calcutta -1.
3. Officer on Special Duty, Competent Authority, 20 British India Street, Calcutta – 29.
4. Appellate Authority under Section 3(a) of Act 13 of 1976 Ministry of Finance (Department of Revenue and Banking), New Delhi.
5. Tax Recovery Officer, Income Tax Department, Patna.
6. State of Bihar, Home Department (Special Section) Bihar Secretariat, Patna.

.... Respondents

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Appearance :

(In LPA Nos. 2 and 25 of 1997)

For the Appellant : Mr. Sandeep Kumar, Advocate
Mr. Alok Kumar, Advocate
For the Respondent : Mr. Sanjay Kumar, A.S.G.
Anjani Kumar Sharan, C.G.C.

(In LPA No. 27 of 1997)

For the Appellant : Mr. P.N. Shahi, Sr. Advocate
Mr. Mritunjay Kumar, Advocate

For the Respondents : Mr. Rajesh Kr. Verma, C.G.C.

CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH
And
HONOURABLE JUSTICE SMT. NILU AGRAWAL
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH)

Date: 13-08-2015

All these three cases are inter-linked and they arise out of a proceeding for forfeiture of property under the provisions of the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 (hereinafter referred to as the “SAFEMA”).

2. We have heard at length the parties. The facts are within a narrow compass. Late Mewalal was a businessman at Patna, had four sons namely, Ram, Lakshman, Bharat Prasad and Shyam Babu. After the death of Mewalal, the four brothers continued the business as a H.U.F. Firm. In 1962, there was a family partition. Bharat Prasad and Shyambabu then carried on businesses under the name and style of Stainless Steel House and other Shyam Steel House, one in Bakarganj, Patna and other in Muradpur. The business was exclusively of Steel utensils.

3. Till 1968, there was no restrictions of import of steel or steel utensils from Nepal under Indo-Nepal Treaty, whereas, there was no qualitative or quantitative excessive imports of steel utensils affecting the local market in India to



utensils produced in India. In 19th May, 1969, Government of India issued a circular under the Customs Act, restricting import of stainless steel utensils from Nepal. Various customs formalities had to be complied with apart from payment of duty. On 03.06.1974 to 06.06.1974, the Customs Officers allegedly raided the Stainless Steel premises of the two brothers and reported that they were unable to produce document in relation to purchase of some stocks of stainless steel utensils which had been imported from Nepal, from M/s Devi Dayal Manufacturer of Bombay. No penal confiscation/forfeiture orders were taken up under the Customs Act, nor any proceeding for evasion of duty or illegal import was taken, under the Customs Act.

4. Admittedly, the Customs Authorities then informed the Income Tax Authorities of the unexplained stocks of steel utensils. Income Tax Authorities reopened the issues under Section 147 of the Income Tax Act. Apparently, upon assessment being made, this information was then given to the Customs Authorities, by the two brothers Bharat Prasad and Shyam Babu, who had been detained under the Maintenance of Internal Security Act. An internal emergency having been imposed, they were then both detained, put under the preventive detention under the Conservation of Foreign Exchange and Prevention of Smuggling

Activities Act, 1974 (hereinafter referred to as “COFEPOSA”).

5. They challenged unsuccessfully their preventive detention up to the Apex Court. Their contentions were rejected in view of the judgment of the Apex Court in the case of **A.D.M. Jabalpur Vs. B. Shukla** since reported in **AIR 1976 SC 1207 = (1976) 2 SCC 521**.

6. Now, a notice was issued not only to the two brothers, but their wives as well under the “SAFEMA”. In relation to the two ladies i.e. Kamla Devi and Lilawati Devi apart from their cash credits appearing in the ledger of their husbands’ business, notices were issued in respect of certain immovable property which two of them were holding jointly. The two being relatives as two wives of Bharat Prasad and Shyam Babu who were detained under the COFEPOSA, the authorities got jurisdiction under SAFEMA to proceed against their properties as properties illegally acquired.

7. It may be noted that there being no proceedings under the Customs Act at all, and the proceedings, so far as Income Tax is concerned, they did not implicate the properties of the wives. Yet, proceedings were initiated, show cause having been filed, the competent authority under the SAFEMA, ordered forfeiture of those properties, solitary on the ground that the two

ladies were unable to explain the sources of acquisition of the properties initially held in the year 1963. This was not interfered with by the appellate authority or learned Single Judge of this Court. Hence, this Intra-Court Appeal.

8. Mr. Sandeep Kumar, learned counsel in support of the writ petitions submitted that the Custom authorities or the Competent Authority having not conducted any inquiry at any stage prior to issuance of notice under Section 6 in terms of Section 18 of the “SAFEMA”. It cannot be said that the competent authority had any “reason to believe” to initiate the proceedings.

9. Several judgments have been cited in support of different Acts including SAFEMA to show what “reason to believe” would be and especially when an act prescribes “reason to believe” to be recorded in writing.

10. In our view, it is not very necessary to hold this question, because, the notice that Bharat Prasad and Shyam Babu have been detained in COFEPOSA for indulging in several schemes, that itself gives them jurisdiction. Further, in the notice under Section 6 of the “SAFEMA” itself, it is noticed that report in terms of Section 6 of the Act, having been received from the Income Tax Authorities, there was “reason to believe” that

conditions existed for forfeiture of properties.



11. In our view, it is well established that existence of materials is a condition precedent for forming a “reason to believe”, but, it is not open for the court to go into the question of sufficiency of materials. So far as the materials are concerned, the Apex Court in the case of **Aslam Mohammad Merchant Vs. Competent Authority** since reported in **(2008) 14 SCC 186**, has held that there has to be a preliminary inquiry which would furnish grounds for “reason to believe”. The preliminary inquiry has to lead to the reason to believe that the properties are illegally acquired properties.

12. In the present case, if we see the notice, which gives the fact for “reason to believe”, that Bharat Prasad and Shyam Babu had been detained under COFEPOSA and that a report about unexplained stocks of steel utensils had been received from the Income Tax Department. There was neither any inquiry nor any report nor any material suggested that the properties which were sought to be forfeited were illegally acquired properties. At the cost of repetition, we may note that no proceeding either for confiscation/forfeiture, penalty or claim of Customs duty was ever started against either Bharat Prasad or Shyam Babu, even though, it was initially, the customs authority



that had raided the two shops. There is no mention about this fact in the notice at all. Thus, the whole notice is based upon detention under COFEPOSA and information received from the Income Tax Authorities, neither of which in any manner shows about illegal acquisition of property. It is assumed that if a person is detained under the COFEPOSA, then all the properties acquired by him and his relatives as defined under the Act, *ipso facto* becomes illegally acquired properties. That unfortunately, is not the law as has been held in the case of **Aslam Mohammad Merchant (supra)**. This, in our view, would itself be sufficient to set aside the proceedings.

13. We may also note at this juncture in issue, the detention under COFEPOSA, could not have been challenged in view of the judgment of the Apex Court in the case of **A.D.M. Jabalpur (supra)**, the fundamental rights including the rights under Article 14, 19 and 21 had been suspended. Therefore, the challenge to the detention under COFEPOSA was not entertained right up to Supreme Court. In this situation, merely to create jurisdiction, reference to COFEPOSA, the detention would not be a safe endeavour. The more drastic the provisions the stricter the scrutiny.

14. The other reason why we are inclined to interfere



is that the competent authority does not dispute that initially A-property was purchased, in the year 1968, in the name of Lilawati Devi, is not in dispute. It is also not in dispute that in 1967, she sold it for a price of Rs. 48,000/-. In the year 1968, Lilawati Devi got a house for Rs. 40,000/- and she along with her sister-in-law, petitioner, Kamla Devi, jointly got another house for Rs. 70,000/-, Rs. 40,000/- is paid by Lilawati Devi and Rs. 30,000/- paid by Kamla Devi. It is not in dispute that she was the daughter-in-law of Late Mewalal, who was an established businessman from before.

15. Can it be said that this was either a wrong plea, or an unreasonable plea. In our view, the law is settled since held in **AIR 1956 SC 217** in the case of **Aher Raja Khima Vs. State of Saurashtra**, that a reasonable explanation given, though, it may not be fully able to establish, it must normally be accepted.

16. Here, the Competent Authority took a hyper technical view of the pleadings and assertions, though none of the facts as noted above, were disputable in any manner.

17. On the facts aforesaid and keeping in view the fact that the substantive restrictions on import of steel utensils was brought about in 19th May, 1969, and these purchases of properties, partition in the family in the year 1962, were all much

much prior to that. In our view, applying the Wednesbury principle the decision of the Competent Authority and the Appellate Authority as well as the learned Single Judge, who has not gone into the question of denial at all, cannot be sustained.

18. To us, this axiomatic approach where authorities could not find anything to even initiate proceedings under the Customs Act or anything substantial under the Income Tax Act, merely because of COFEPOSA detention order, which could not be challenged because of internal emergency, to permit properties which had been long back acquired, to be forfeited cannot be sustained.

19. Thus, on the ground aforesaid, we are unable to sustain the order of the Competent Authority or the Appellate Authority or the learned Single Judge. The order of the learned Single Judge is, thus, set aside. The writ petition is allowed. Order of the Competent Authority and the Appellate Authority in relation to the three petitioners are set aside.

(Navaniti Prasad Singh, J.)

(Nilu Agrawal, J.)

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